and again at page 889 :—

"The presumption against executors taking beneficially arising by virtue of the Executors Act, 1830 . . . . prevails unless a contrary intention appears by the will, so that where (this Act) applies, parol evidence is not admissible to show that the testator intended his executors to take the residue beneficially."

Mr. G. H. Goh on behalf of the defendant argued that the will being made in Chinese by a Chinese woman too much attention should not be paid to the technical meaning of the words and the effect of the first sentence of the will was really not to give a power of attorney to Teoh Hock Aun but to make him an administrator. He argued that the word "kuasa" is often used as referring to administrators as well as to attorneys. The first sentence of the will having thus, in effect, made Teoh Hock Aun administrator it followed that the subsequent words giving the property to the executrices "for administration for ever" meant administration only in the sense of "managing" and was intended to be an absolute gift.

Whilst I am prepared to agree that the words used by this testatrix should not be construed too technically I am unable to accept Mr. Goh's construction. In the first place it appears plain to me that the first sentence of this will is not testamentary in any sense. It appears to me to be a straightforward appointment of an attorney made by the testatrix before her death. The document really consists partly of a power of attorney and partly of a will. The only part of the document which is really testamentary is the second sentence commencing with the words "in the event of my death".

There is undoubtedly some difficulty in construing the words "for ever", but I think this does no more than indicate an intention of permanency. The word "entrust", however, appears to me to be an express word of trust. As pointed out by Mr. Lim Huck Aik it is just as easy in Chinese as in any other language to use the word "gift" and to my mind the word "entrust" quite definitely imports the notion that the property is entrusted for a purpose. I am of opinion that it was deliberately used as a word of trust.

Far, therefore, from their being a contrary intention in this will it appears to me to be plainly expressed that these ladies were to take the property upon trust. Whether that trust is one which fails for want of precision or whether it is a trust to administer appears to me to make no difference to the result.

I am, therefore, of the opinion that the property of the testatrix in question vested in the executrices in trust for the persons beneficially entitled as on an intestacy.

Order accordingly.

KR. NARAYANAN v. V. AL. ALAGAPPA

[A.C.J. (Storr J.) October 22, 1955]

[Muar — Civil Appeal No. 2 of 1955]

Moneylenders Ordinance, 1951, ss. 16 & 27 — Attesting of promissory note — When necessary.

This was an appeal against the decision of the learned Magistrate, Segamat, giving judgment to the respondent in the sum of $1,000 and costs. The appeal was on two grounds (1) that as the respondent was a moneylender, he had not complied with s. 27 of the Moneylenders Ordinance, 1951, in that as the appellant did not understand or write English, there was no attestation as required in the promissory note; and (2) that the respondent did not comply with s. 16 of the Moneylenders Ordinance as the promissory note did not contain all the terms of the contract.

Held: (1) s. 27 of the Moneylenders Ordinance merely provides that the terms of the promissory note are to be explained to the borrower if he does not understand the written language on such promissory note, and if the borrower understands the terms and contents of the note, it is unnecessary to have an attestor, even if the borrower does not understand the language in which the note is written that is either English or Malay; (2) on the facts the promissory note in this case as filled in by the appellant before execution was sufficient to satisfy the provisions of s. 16 of the Ordinance.

CIVIL APPEAL.

S. C. MacIntyre for the appellant.

Jeff Lang for the respondent.

Storr J. : — This was an appeal from the decision of the learned Magistrate, Segamat, giving judgment to the respondent (plaintiff) in the sum of $1,000 and costs.

The appeal was on two grounds —

1. That as the Respondent was a moneylender, he had not complied with section 27 of the Moneylenders Ordinance No. 42 of 1951 in that as the Appellant (Defendant) did not understand or write English, there was no attestation as required in the promissory note; and 2. That the Respondent did not comply with section 16 of the Moneylenders Ordinance as the promissory note did not contain all the terms of the contract.

Section 27 of the Ordinance reads as follows :—

"27. (1) Whenever a promissory note is taken as security for any loan and the borrower is a person not understanding the written language on such note the note shall be attested by an Advocate and Solicitor of the Supreme Court, a President of Sessions Court, a Magistrate, District Officer, Justice of the Peace, Registrar of a Sessions Court, Commissioner for Oaths, or such other person as may be appointed by the High Commissioner generally for such purpose. The attestor shall explain the terms of the promissory note to the borrower, and shall certify thereon that the borrower appeared to understand the meaning of the same. The money borrowed shall be paid over by the lender to the borrower in the presence of the attestor who shall certify the fact upon the promissory note. (2) Any promissory note required to be attested under this section and not so attested shall be void and the lender shall not be entitled to recover any loan for which such note is taken as security".

Mr. MacIntyre who appeared for the appellant argued very forcibly that this section meant that if the borrower did not understand the language in which the note was written, then it had to be attested; it did not

mean that if the borrower understood the contents of the note but not the language in which it was written it did not have to be attested. Here the learned Magistrate found that the appellant (borrower) understood the contents of the note, but did not speak English.

Mr. Lang, for the respondent, submitted that all that was necessary was that the appellant (borrower) should understand the contents of the note.

Now the wording of this section provides that the terms of the promissory note are to be explained to the borrower if he does not understand the written language on such promissory note and that to me means simply what it says. If the borrower does not understand what is written on the promissory note, then an attestor shall explain the terms of the note; it does not mean that, if the borrower does not understand the language in which the note is written, i.e. either English or Malay (vide section 16), there must be an attestor, if he understands the terms and contents of the note. I think, therefore, on that point in his grounds of judgment the learned Magistrate was correct in his interpretation of section 27.

Now, as to the second point that the provisions of section 16 of the Ordinance had not been complied with, as all the terms of the contract were not written on the promissory note before it was executed and the money paid over, neither were they on any copy, if one was handed to the appellant, having considered the evidence on the record and the arguments of Counsel on this point, together with the learned Magistrate's finding that he could not accept appellant's story, I have come to the conclusion that the promissory note as filled in by the appellant before execution was sufficient to satisfy the provisions of section 16 of the Ordinance. I accept the findings of the learned Magistrate which amounts to a finding that a copy of the promissory note as executed was handed to the appellant in compliance with section 16 of the Ordinance.

For the above reasons the appeal will be dismissed with costs.

Appeal dismissed.

REG. v. NG LEAN TEIK

[A.Cr.J. (Spenser Wilkinson J.) October 14, 1955]

[Penang — Criminal Appeal No. 30 of 1955]

Firearms and Ammunition (Unlawful Possession) Ordinance, 1946 — Rules under Arms and Explosives Ordinance, r. 6 — Unlawful possession of ammunition — Whether members of Home Guard are exempted from provisions of the Ordinance — Construction of r. 6.

Interpretation of Statutes — Rule of Construction.

In this case the respondent was charged with unlawful possession of seven rounds of 12 bore shot gun ammunition an offence under r. 6 of the Rules made under the Arms and Explosives Ordinance and punishable under s. 3 of the Firearms and Ammunition (Unlawful Possession) Ordinance 1946. The respondent was a member of the Home Guard and the facts showed that the seven rounds were found in his house. The seven rounds had originally been issued to the respondent on the range for firing practice. The learned President of the Sessions Court acquitted the respondent as he held that the list of persons to whom the provisions of the Arms and Explosives Ordinance did not apply as set out in s. 3 of the Ordinance must be extended to include a member of the Home Guard. The Crown appealed against the acquittal.

Held: (1) the learned President was right in holding that the Arms and Explosives Ordinance did not apply to the respondent as he was a member of the Home Guard and the ammunition was in the possession of the respondent in the course of his duty; (2) as the respondent had the ammunition in his possession for his private use and not for trade purposes, he had committed no offence under r. 6 of the Rules under the Arms and Explosives Ordinance and he was therefore rightly acquitted.

Cases referred to:—

(1) *Lane v. Cotton* 88 E.R. 1458.

(2) *Magor & St. Mellons Rural District Council v. Newport Corporation* (1951) 2 T.L.R. 935.

MAGISTRATE'S CRIMINAL APPEAL.

D. C. Jackson (Sr. Federal Counsel) for the appellant.

Respondent in person.

Spenser Wilkinson J. : — This was an appeal by the Crown against the decision of the President of the Sessions Court acquitting the respondent upon a charge of unlawful possession of seven rounds of 12 bore shot gun ammunition. The charge was laid down under Rule 6 of the Rules made under the Arms and Explosives Ordinance and as punishable under section 3 of the Firearms and Ammunition (Unlawful Possession) Ordinance, 1946.

Under the Rules above referred to (Rule 11) the penalty upon contravention of Rule 6 is a fine not exceeding $500 and forfeiture of the explosives stored or possessed, but by reason of the provisions of the Firearms and Ammunition (Unlawful Possession) Ordinance, 1946 any unlawful possession (which means possession contrary to any written law on the subject) of firearms or ammunition is punishable with ten years' imprisonment or a fine of $10,000 or both.

The facts of the case as found by the learned President are that the respondent was a member of an operational section of the Home Guard and in so far